History of the Supreme Court of the United States. By GUSTAVUS MYERS. (Chicago: Chas. H. Kerr and Company, 1912. Pp. xviii, 823.)

This work is intended to portray the Supreme Court of the United States as the effective instrument, in the development of certain lines of American law, of dominant capitalism. "Throughout its whole existence," we are informed by the author in his preface, the court has "incarnated into final law the demands of the dominant and interconnected sections of the ruling class." On the other hand the membership of the court has, we are relieved to learn, been personally "peculiarly free from venal corruption in an age when such corruption was common if not continuous."

The value of the work consists in the emphasis which it puts upon the personal connections of members of the Supreme Court before their appointment as influencing their view of the law after appointment. Sometimes such factors are plainly seen to have been determinative, as for instance in accounting for the remarkable position taken by Chief Justice Chase in Hepburn vs. Griswold. Instancing the usual charge that Chase had the presidency on the brain, Mr. Myers continues very aptly: "But there was another factor . . . . Infallibly a man's early economic interests, associations and training, long persisted in, have a determinating influence on his views, and conspire to sway or prejudice him in one direction or another. As a young lawyer and in middle life Chase's self-interested associations were mainly with bankers and as an older man he was constantly as secretary of the treasury in personal touch with the foremost bankers of the country. Nearly his whole adult life, it may be said, was—so far as his personal interests and connections went—an unbroken association with bankers and a corresponding susceptibility and flexibility to their interests." Also, some of the facts bearing upon the personal associations of more recent members of the court, which Mr. Myers has collected, are highly suggestive (chs. xiii–xvi).

But of course Mr. Myers must ride his hobby to death. Thus he traces results to the peculiar associations of a particular judge which are more readily explained by views held by society at large. He has indeed not the least appreciation of the way in which theory may affect the outlook, not of judges alone, but of all men, and far less has he any appreciation of the real strength of established legal doctrine. The law to his view is not simply malleable, it is nothing more than a nose of

wax. More irritating still however is his deliberate refusal to distinguish between law which, by furthering a possible class interest, benefits society at large and law designed to bolster a class interest at the expense of society—in short, his abandonment of all standards of justice save that set up by laborite Socialism, which is the interest or supposed interest of labor. But if the exigencies of a present-day class-struggle alone determine right and wrong, why should Mr. Meyers be so careful to insist upon the personal rectitude of the judges? The truth is that he repeatedly abandons his pose to insinuate the worst. (vd. pp. 261–61, 433–37, 499, 504–05) Also, as might be supposed, since his own standard is of such modern contrivance, the judgments he passes are sometimes strongly flavored with anachronism (vd. p. 397). Errors of statement are sometimes glaring (vd. pp. 301, 303, 469, 483, 504–05, etc.) Nor is our author chargeable with an over-developed sense of humor. On pages 260–61 is cited a letter of Story, at the time a practicing attorney, in which the writer says that often he dines with the judges of the Supreme Court. "When Story wrote this letter, little did he think of what historical importance it would be," comments Mr. Myers. How frail a thing must judicial virtue be! Equally ridiculous is the author's attempt (pp. 479–80) to classify Justice Clifford as one of the railroad contingent on the court, on the ground that Clifford had a son-in-law who was the son of one of the "very foremost capitalists of Maine!" Sometimes his thesis that the judges conceive the public interest only in the light of a class interest falls down. Thus Field, who is classified as a railroad judge, sides with the banking interest in Hepburn vs. Griswold. (p. 504). This fact Mr. Myers endeavors to explain away, but the decision of the court in Munn vs. Illinois he discreetly passes over in silence. Similarly, he ignores substantially the whole body of doctrine of the court in interpretation of the commerce clause, though this branch of our constitutional law undoubtedly represents the greatest single contribution of the court. On the other hand, two-fifths of the work is filled up with land-fraud cases. It has to be admitted that the story of its handling of these cases does not comprise a very brilliant page in the history of the court. But the blame lies primarily with congress, which could have remedied the law at any time. The case is of course that, although the Constitution makes the Supreme court a judge of fact as well as of law, whenever the Court has been confronted with the task of deciding on facts it has scamped the job.

Coming down to modern issues, Mr. Myers has little use for the

interpretation which the court has, in these latter days, imposed upon the fourteenth amendment, though his criticism of it is naturally quite innocent of logical or historical analysis. More disappointing is his failure to point out the demonstrable fact that this interpretation was secured, in part at least, by the promotion to the Supreme Court of judges who had favored it in lower courts, as against those who had disfavored it. But at one point our author finds the court "ultra-progressive," namely, in the attitude which he thinks he finds it taking toward monopoly. At this point he becomes fairly eulogistic: "In reality," he writes (661), "the Supreme Court in the specific point in question was the most alert, adaptable, ultra-progressive institution in the United States. Frosted with heavy years most of its members truly were; but in depth of mind, in clarity of vision and grasp of affairs no body of men were less archaic or (in the particular referred to) more keenly responsive to the altering conditions as required by the dominant division of the ruling class. This was their one ability—an ability to be estimated and appreciated at its high historic worth." Notwithstanding its unfortunate economic training the Court has refused to stand in the way of industrial evolution, has declined "to interfere with the orderly transition of society from an older outworn, crumbling stage to a newer, more modern era."

While suggestive, the volume as a whole leaves one strongly with the impression that Laborite Socialism enjoys too recent a revelation to fit its devotees for the task of writing history as that task is conventionally conceived.

EDWARD T. CORWIN.

The Corporate Nature of English Sovereignty. By W. W. LUCAS. (London: Jordan and Sons, Limited, 1911. Pp. xvi. 91.)

The reader who expects to find in this book any application to England of a general theory of sovereignty will be disappointed. It deals with the question only as a branch of English law. The author describes his own method in saying that he "has taken the liberty of applying appropriate modern descriptions to early institutions which existed only in crude or innominate forms, as this is a practice which has been adopted by other writers including many of the highest eminence." Thus the "appropriate modern description" of the Anglo-Saxon government seems to depict a state where all the people were *entitled* to be present at the meetings of a Witan whose power of electing and deposing kings